

NEBRASKA BOARD OF PUBLIC ACCOUNTANCY
140 N. 8th Street, Suite 290, Lincoln, Nebraska
MINUTES

Meeting was held at the Mid-Town Holiday Inn, Grand Island, Nebraska

July 17-18, 2000

1. General

A. Call to Order and Roll Call. The Board of Public Accountancy was called to order at 9:04 a.m. on Monday, July 17, 2000 with Chair William Gaines, Jr. presiding. The roll was called with the following members present: William Gaines, Nina Kavich, Dean Graf, Richard Hoiekvam, George Klein, William Nuckolls, and Kathleen Smith. Member Luke Aldy was absent. Also present was Executive Director, Annette Harmon. The meeting was held at the MidTown Holiday Inn, 2503 South Locust, Grand Island, Nebraska.

B. Approval of meeting agenda for July 17-18, 2000. Moved by Smith, seconded by Nuckolls, to approve the agenda for the July 17-18, 2000 meeting as written. On roll call vote, all members present voted aye. Member Aldy was absent. Motion number 1 carried.

C. Approval of the minutes of the May 19, 2000 Board meeting. Moved by Smith, seconded by Kavich, to approve the minutes as written but with typographical errors corrected and an additional statement under "Public Comment Period." On roll call vote, all members present voted aye. Member Aldy was absent. Motion number 2 carried.

2. Consent Agenda

Approval of Consent Agenda by Roll Call Vote. Moved by Smith, seconded by Graf, to approve the Consent Agenda, with the exception of the June Disbursements. On roll call vote, all members present voted aye. Member Aldy was absent. Motion number 3 carried.

A. Published Notice of Meeting. Pursuant to call and published notice, the notice of meeting is herewith attached.

B. Review of Board Budget Status Report. The Board reviewed the May 31, 2000 Budget Status Report.

C. Approval of May ~~and June 2000~~ disbursements. The Board reviewed and approved the May ~~and June 2000~~ disbursements.

D. Requests for Acceptance of Surrendered Certificates and Approval of Inactive-Retired Classification. The Board accepted the voluntary surrender of the CPA Certificates of Paul R. Thompson (#862), Timothy D. Stutheit (#5612), Robert M. Emswiler (#5745) and Thomas J. Willenborg, Sr. (#942). The Board also reviewed and approved the classification of Inactive-Retired for Donald D. Bienhoff (#990), Robert G. Ficke (#5790), Robert E. Gondolfi (#1005), Larry E. Haack (#931), Thomas D. Hubbard (#3140), George F. Kerkhove (#664), Sandra E. Matson Rippe (#3104), Edward T. Mines (#1173), Edwin Nielsen (#2898), Robert L. Perry (#681), Ernst E. Schnabl (#512), Lyla A. Thompson (#4990), H. Wyman Woodke, and Donald Hey (PA Reg. #113).

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E. Office Management Report. The Board reviewed a report on permits and registrations issued as of July 1, 2000. Prior year's statistics were also reviewed for comparison.

CLOSED MEETING

Closed Meeting. Moved by Kavich, seconded by Nuckolls, that the Board go into closed session at 9:16 a.m. for the purpose of enforcement. On roll call vote, all members present voted aye. Member Aldy was absent. Motion number 4 carried.

3. Show Cause Hearing – Complaint #00-01 – Incompetent & negligent preparation of Subchapter S tax return. This informal hearing was held in closed session per the decision of the Respondent.

Return to Open Meeting. Moved by Smith, seconded by Hoiekvam, that the Board return to open session at 11:21 a.m. On roll call vote, all members present voted aye. Member Aldy was absent. Motion number 5 carried.

4. Advance – Discussion and Determination on Select Topics

The Board held discussions on the Uniform Accountancy Act, the Model Code of Professional Conduct, and Proposed Standards for Continuing Professional Education (CPE). Susan Scott of Scott & Associates facilitated the discussion. A summary of the items of consensus will be generated and reviewed by the Board at the next meeting. A list of items yet to be discussed will also be made and scheduled for future review.

The Board recessed at 5:30 p.m. for the day.

The Board reconvened at 9:08 a.m. on Tuesday, July 18, 2000.

The roll was called with the following members present: William Gaines, Nina Kavich, Dean Graf, Richard Hoiekvam, George Klein, William Nuckolls, Kathleen Smith, and Luke Aldy. Also present was Executive Director, Annette Harmon.

5. New Business

A. Future Meeting Dates. The next regularly scheduled Board meetings are September 28-29 and November 16-17 in Lincoln.

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B. Report from Executive Director. The Executive Director reported on computerization projects, including the new FoxPro program. It is hoped the web site may be updated by October 1 to make it more user-friendly with more search buttons, better organization and several more features. Two searchable databases are planned for addition to the page: a disciplinary action database by October 1 and the Annual Register (licensed Nebraska CPAs) by December 1.

Plans for staff training in technology and customer service were also discussed, including Microsoft Access, Excel, Word, Foxfire/FoxPro, and Windows NT. Ms. Harmon also reported on her leadership and management training at Duke University in North Carolina and thanked the Board for supporting her attendance.

C. Report from the Chair of the Board. William Gaines, Chair, reviewed the results of a Performance Card survey mailed to 930 individuals renewing their active permits this year. The survey was a quick “pulse” of the service licensees are receiving from office personnel. 39% were returned, and 92% of those were returned within two weeks of mailing. 84% overall rated office personnel service grades of “Strongly Agree” or “Agree.” Staff was commended for their service to licensees and challenged to continue to provide excellent service. Areas noted for improvement on the survey cards will be incorporated into operations as much as possible.

E. NASBA.

1. Annual Meeting Advisory Votes. The National Association of State Boards of Accountancy (NASBA) has requested each state Board be prepared to vote on “Proposed Changes to the Structure of Committees that Oversee the Examination Program” at the upcoming Annual Meeting. Moved by Hoiekvam, seconded by Aldy, to support and promote participation by NASBA in AICPA Examination related Committees and Boards. On roll call vote, all members present voted aye. Motion number 6 carried.

2. Attendance at Annual Meeting in Boston, MA. Moved by Klein, seconded by Kavich, to approve Board members’ attendance (subject to Members’ reappointment) and the Executive Director’s attendance at the NASBA Annual Meeting in Boston, Massachusetts with the effort of minimizing expenses after the Board pays for Saturday (if it results in a savings of airfare), Sunday, Monday, and Tuesday nights. On roll call vote, all members present voted aye. Motion number 7 carried.

D. Budget: Approval of Biennium Budget for 2001-2003. The Board reviewed a draft of a proposed budget for fiscal years 2001-2002 and 2002-2003. Moved by Graf, seconded by Hoiekvam, to approve the Biennium Budget Request for 2001-2003. On roll call vote, all members present voted aye. Motion number 8 carried.

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CLOSED MEETING

Closed Meeting. Moved by Smith, seconded by Klein, that the Board go into closed session at 12:39 p.m. for the purpose of enforcement. On roll call vote, all members present voted aye. Motion number 9 carried.

Return to Open Meeting. Moved by Graf, seconded by Nuckolls, that the Board return to open session at 2:40 p.m. On roll call vote, all members present voted aye. Motion number 10 carried.

6. Report of Enforcement of Professional Conduct Committee

A. Complaint Consent Agenda. Moved by Smith, seconded by Graf, to remove Complaint #98-08 from the Complaint Status Log and Complaint Consent Agenda for individual discussion. On roll call vote, all members present voted aye. Motion number 11 carried.

Complaint #98-08 is the Board's request to the Attorney General for an Injunction against Robert Chisholm for his continuous unlawful use of the CPA designation. Moved by Smith, seconded by Graf, that staff provide evidence of recent telephone directory listings and write a letter to Assistant Attorney General, Lynn Melson, requesting the status of the filed petition for an Injunction against Mr. Chisholm, and that Ms. Nelson appear at the September meeting to give the Board an update. On roll call vote, all members present voted aye. Motion number 12 carried.

Moved by Smith, seconded by Kavich, to defer Item #2, Complaint #98-15, on the complaint consent agenda to the next meeting. The Board would like Lynn Melson, Assistant Attorney General, to comment on whether we could obtain copies of settlements of litigation. On roll call vote, all members present voted aye. Motion number 13 carried.

B. Findings of Fact/Conclusions of Law for Gerard Forget: Complaint #99-07. Moved by Smith, seconded by Aldy, to postpone this item until the Board's next regularly scheduled meeting. On roll call vote, all members present voted aye. Motion number 14 carried.

C. Update on Morris Shields' Appeal. The Board reviewed correspondence from Legal Counsel, Robert Gritit, informing the Board that the Supreme Court had dismissed the appeal but that Mr. Shields' attorney had filed a motion to vacate the Order and a brief in support of that motion. Mr. Gritit indicated he had prepared a brief accordingly and he would keep the Board informed of the appeal's progress.

D. Permit/Inactive Registration Renewal Applications with Pending Litigation. Moved by Smith, with the Committee's recommendation, that Deloitte and Touche, LLP be requested to

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execute a Litigation Monitoring Consent Order in the case captioned "Public Service Co. of New Mexico vs. Lyons, et al., Case No. SF 98-815(c) (1st Judicial District, Santa Fe City, N. Mex.). On roll call vote, all members present voted aye. Motion number 15 carried.

E. Complaint #98-05 Violation of Consent Order. The Board had previously held a formal hearing on May 19, 2000 against Mr. Max Kathol alleging a violation of a Consent Order that he had entered into with the Board dated March 6, 1999. Member Graf recused himself from the formal hearing proceeding and from any deliberations or discussions regarding this matter. Moved by Smith, with the Committee's recommendation, to find that Mr. Kathol failed to comply with the Board's Rules and Regulations with respect to workspace. The Findings of Fact and Conclusions of Law would state that he entered into a Consent Order dated March 6, 1999, and that per that Consent Order he was not to perform audits and he agreed not to do so; and the Board finds that he failed to comply with the Consent Order. The Board concludes that he violated a Rule of Professional Conduct that was promulgated under the authority of Section 1-137 of the Public Accountancy Act and that he violated Chapter 10 of Title 288, Revised and Substituted Rules of the Board. It is the Decision and Order of the Board that he should comply in all respects with all provisions of the Nebraska accountancy laws and all rules and regulations of the Board; that he shall timely respond to all inquiries from the Board or the Board's representatives, and shall timely file all required documents with the Board; that the Consent Order dated March 6, 1999 shall remain in full force and effect; that the Respondent Max Kathol shall not perform or agree to perform, directly or indirectly, any audits or have his name associated with any entity which performs audits and that his permit to practice is so restricted. Further, Max Kathol may retain his CPA certificate and permit to practice as long as he complies with this Order, with all laws, rules and regulations of this Board; and that he shall not perform or agree to perform audits, directly or indirectly, or have his name associated with the name of any entity which performs audits. On roll call vote, all members present voted aye, except Member Klein who voted nay and Member Graf who abstained. Motion number 16 carried.

F. Complaint #00-03 Violation of Auditing Standards. The Board directed further investigation of the complaint.

G. Complaint #00-04 Felony Conviction: Attempted First Degree Sexual Assault of a Child. The Board directed further investigation of the complaint.

H. Complaint #00-05 Failure to Follow Auditing Standards. The Board directed further investigation of the complaint.

I. Complaint #00-06 Acts Discreditable to the Profession and Failure to Follow GAAP. Moved by Smith, seconded by Graf, that Joseph Hartnett be requested to execute a Litigation Monitoring Consent Order in the pending litigation with KHR, Ltd., C. Scott Remington, and Jeffrey L. Kenkel. On roll call vote, all members present voted aye. Motion number 17 carried.

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**3. Show Cause Hearing – Complaint #00-01 – Incompetent & Negligent
Preparation of Subchapter S tax return.**

Moved by Smith, with the Committee's recommendation, to find probable cause exists and to file a formal complaint and Notice of Hearing for the next meeting against Rodney Zwygart, alleging violations of the Public Accountancy Act, Sections 1-112 and 1-137 (2) Dishonesty, fraud, or gross negligence in the practice of public accountancy, and (4) Violation of a rule of professional conduct adopted and promulgated by the Board, and Chapter 5 of Title 288 of the Revised & Substituted Rules of the Board: Section 003 Integrity and Objectivity; Section 004.01 Competence; and Section 007.01 Acts Discreditable; that direction be given to Legal Counsel and Board staff that the Board would consider entering into a Stipulation and Consent Order with Mr. Zwygart that he did violate the applicable regulations and statutes, and that the Board would consent to the following disposition: 1) he would not perform any business liquidation tax returns unless reviewed by a CPA chosen by the Board and at his own expense for a period of two years from the date of the Consent Order; 2) that he complete 32 hours of CPE in the advanced tax and/or the ethics area within one year of the date of the Consent Order; that no more than 50% of the CPE credit could be in self study; and that the 32 hours is above and beyond the normal requirement for renewal of a permit in this state; 3) that he complete the AICPA Ethics exam, receive a passing grade and submit the report showing the passing grade within 90 days of the signing of the Consent Order. He must sign and return the Stipulation and Consent Order within two weeks of receiving it for the Board to agree to it. On roll call vote, all members present voted aye, except Member Gaines who voted nay. Motion number 18 carried.

7. Educational Advisory Committee Chair

A. Report from the Chair. Nina Kavich, Committee Chair, reported that the staff is working with the colleges and communicating with each of them about deficiencies for students in meeting the 150-Hour Education Requirement at their institution. A meeting may also be scheduled with the colleges to discuss the requirements, perhaps as a videoconference.

8. Report of Continuing Education Committee

A. Ratification of staff program evaluations since last meeting. Moved by Hoiekvam, with the Committee's recommendation, to approve the Statistical Summary Report of Programs (that gives the number of course denials, approvals and reconsideration requests) that have been evaluated and approved by the CPE Committee since the last meeting. On roll call vote, all members present voted aye, except Member Graf who voted nay. Motion number 19 carried.

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9. Report of Examination & Licensing Committee

A. Ratification of initial permits to practice issued; certificates issued. Moved by Aldy, with the Committee's recommendation, to ratify the initial permits to practice and certificates issued by examination and reciprocity. On roll call vote, all members present voted aye. Motion number 20 carried.

B. Application(s) for Reinstatement to Active Permit. Moved by Aldy, with the Committee's recommendation, to approve the applications for Reinstatement to Active Permits. On roll call vote, all members present voted aye. Motion number 21 carried.

C. Plans to Remove Deficiencies for Renewal of Active Permit. Moved by Aldy, with the Committee's recommendation, that the Board adopt the following administrative procedures regarding the renewal and issuance of an individual or firm permit to practice after the June 30th expiration date:

1. Individuals who have previously been late filing CPE Reports. A permit to practice shall be issued when the individual has presented satisfactory evidence of completion of sufficient CPE hours, has executed a Stipulation and Consent Order, and has paid an administrative fee of \$100 before the June 30th expiration date.

2. Individuals who have previously been late filing CPE Reports and have also (at least one time since June 1998) failed to timely file an application to renew their active permit to practice. A permit shall be issued when the individual has presented satisfactory evidence of completion of sufficient CPE hours, has executed a Stipulation and Consent Order and has paid an administrative fee of \$100 for late filing of CPE and an administrative fee of \$250 for the first occurrence of late filing or an administrative fee of \$500 for the second occurrence of late filing.

3. Individuals who have previously (since June 1998) failed to timely file an application to renew their active permit. An active permit to practice shall be issued when an individual has filed an application for a permit to practice, has executed a Stipulation and Consent Order, and has paid an administrative fee of \$250 for the first occurrence of late filing or an administrative fee of \$500 for the second occurrence of late filing.

4. CPA firms who have previously (since June 1998) failed to timely file an application to renew their firm permit. A firm permit to practice shall be issued when the firm has filed an application for a permit to practice, has executed a Stipulation and Consent Order, and has paid an administrative fee of \$250 for the first occurrence of late filing or an administrative fee of \$500 for the second occurrence of late filing.

On roll call vote, all members present voted aye. Motion number 22 carried.

D. Firm Ownership. The Board had continued this item from the May 2000 meeting and will hold it over until the next meeting and the receipt of requested information from the Attorney General's office.

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E. Approval of Grades for May 2000 CPA Exam. Moved by Aldy, seconded by Smith, to approve the grades as prepared and reported by the AICPA for the May 2000 CPA Exam, subject to staff review for deviations in pass ratios by subject matter. On roll call vote, all members present voted aye. Motion number 23 carried.

F. Report on Licensure Process/Stipulation & Consent Orders. The Board adopted a suggested procedure for dealing with late renewals for an active permit to practice in Agenda Item 9-C that would cover all late renewals.

G. Exam Fee Increases. The Examination and Licensing Committee had directed the Executive Director to participate in the AICPA Conference Call scheduled for July 14, 2000 on the exam fee increases, and to express the Board's dissatisfaction with the AICPA's method of notifying the various Boards of the fee increase.

10. Report of Quality Enhancement Program (QEP)

A. Report of 2000 Review Process/Recommendation of Ratings by Committee. Dean Graf, Chair of the Board's Quality Enhancement Program Committee, reported on their July 10, 2000 meeting. Moved by Graf, seconded by Smith, to adopt the Committee's recommendations for ratings on reports submitted for the year 2000 review, to notify the practice units accordingly, and to utilize the AICPA checklists in future reviews. On roll call vote, all members present voted aye. Motion number 24 carried.

11. Adjournment

It was moved by Smith, seconded by Aldy, that the Board adjourn at 4:00 p.m. On roll call vote, all members present voted aye. Motion number 25 carried.

Submitted by,

Nina B. Kavich, CPA
Secretary